UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.105/573
14 April 1994

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE

REPORT OF THE LEGAL SUBCOMMITTEE ON THE WORK OF ITS THIRTY-THIRD SESSION (21 MARCH-5 APRIL 1994)

CONTENTS

		Paragraphs	Page
INTRODUCTION		1-22	3
I.	QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (AGENDA ITEM 3)	23-30	7
II.	MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (AGENDA ITEM 4)	31-37	8
III.	CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (AGENDA ITEM 5)	38-45	8

Annexes

I.	Report of the Chairman of the Working Group on agenda item 3 (question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space)	10

V.94-22434T

		Paragraphs	Page
II.	Report of the Chairman of the Working Group on agenda item 4 (matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union)		12
III.	Report of the Chairman of the Working Group on agenda item 5 (consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries)		19
IV.	Documents annexed to the report		27
	A. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Unit		27
	Colombia: working paper (A/AC.105/C.2/L.192 of 30 March 1993)		27
	B. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries		29
	Argentina, Brazil, Chile, Colombia, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela: working paper (A/AC.105/C.2/L.182/Rev.1 of 31 March 1993)		29

INTRODUCTION

Opening of the session

1. The Legal Subcommittee held its thirty-third session at the United Nations Office at Vienna from 21 March to 5 April 1994 under the chairmanship of Mr. Václav Mikulka (Czech Republic).

2. At its opening, 572nd meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its current session. A summary of the Chairman's statement is contained in document A/AC.105/C.2/SR.572.

Adoption of the agenda

3. At the opening meeting, the Subcommittee adopted the following agenda:

1. Opening of the session.

2. Statement by the Chairman.

3. Question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

4. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

5. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

Attendance

4. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Philippines, Poland, Romania, Russian Federation, Sierra Leone, Spain, Sudan, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

5. Representatives of the following specialized agencies and international organizations attended the session: Food and Agriculture Organization of the United Nations (FAO), International Atomic Energy Agency (IAEA), International Telecommunication Union (ITU), European Space Agency (ESA) and International Astronautical Federation (IAF).

6. The Chairman informed the Subcommittee at its 572nd and 573rd meetings that requests to participate in meetings of the Subcommittee had been received from Algeria, Cuba, Israel, Nicaragua, Peru, Portugal, Republic of Korea, South Africa, Turkey and Yemen. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, the Subcommittee could take no formal decision on the matter, but that the representatives of Algeria, Cuba, Israel, Nicaragua,

Peru, Portugal, Republic of Korea, South Africa, Turkey and Yemen might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

7. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies and other organizations attending the session, and of the secretariat of the Subcommittee, is contained in document A/AC.105/C.2/INF.26.

Organization of work

8. In accordance with decisions taken at its opening meeting, the Subcommittee organized its work as follows:

(a) Pursuant to the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, on a permanent basis, should rotate each year the order of consideration of substantive agenda items,[1] it considered the three substantive items on its agenda (see para. 3 above) in the following order: item 4, item 5 and item 3;

(b) It re-established its Working Group on agenda item 3, open to all members of the Subcommittee, and agreed that Mr. Franz Cede, the representative of Austria, should serve as its Chairman;

(c) It re-established its Working Group on agenda item 4, open to all members of the Subcommittee, and agreed that Mr. Estanislao Zawels, the representative of Argentina, should serve as its Chairman;

(d) It re-established its Working Group on agenda item 5, open to all members of the Subcommittee, and agreed that Mr. Raimundo González, the representative of Chile, should serve as its Chairman;

(e) It began its work each day with a plenary meeting to hear delegations wishing to address the Subcommittee, and then adjourned and reconvened, when appropriate, as a working group, or began its work as a working group.

9. The following delegations participated in the general exchange of views: Argentina, Austria, Brazil, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, Germany, Iran (Islamic Republic of), India, Indonesia, Japan, Mexico, Mongolia, Netherlands, Niger, Nigeria, Portugal, Republic of Korea, Romania, Russian Federation, Sierra Leone, Sudan, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America, as well as IAF. The views expressed by those delegations are summarized in documents A/AC.105/C.2/SR.572-579.

10. The Working Group on agenda item 3 held three meetings. The Working Group on agenda item 4 held five meetings. The Working Group on agenda item 5 held four meetings.

11. The Chairmen of the working groups reported to the Subcommittee at its 579th meeting, on 5 April (see annexes I, II and III to the present report). The Subcommittee took note with appreciation of the reports and of the work done in the working groups.

12. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance the General Assembly and the Committee on

---

[1] See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 20* (A/45/20), para. 143.

Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies and noted that the percentage of the use of conference services by the Subcommittee had improved lately. In view of that, the Chairman proposed and the Subcommittee agreed that the following measures, similar to those adopted in the past, should also be adopted at the current session of the Subcommittee:

(a) The Subcommittee and its working groups should begin their meetings punctually at the scheduled time, even if there was no quorum (14 members);

(b) Conference Services should be notified as early as possible whenever it was anticipated that any of the services usually provided were not going to be required. If possible, prior notice of 24 hours should be given;

(c) Informal consultations (i.e. outside the auspices of the Subcommittee and its working groups) should not interrupt the work of the Subcommittee or its working groups;

(d) The general rule for annexing documents to the report of the Subcommittee should be that normally any document would be annexed, if at all, only once, to the report of the session in which it was first submitted, but not to later reports;

(e) The Subcommittee should not have plenary meetings in the afternoons when the agenda items on nuclear power sources, on definition of outer space/geostationary orbit and on outer space benefits were considered. Instead, the working groups on those items should meet;

(f) Delegations wishing to speak at the Subcommittee's next plenary meeting should inform the Chairman of their intention before the adjournment of the previous plenary meeting. If no such information was received by the Chairman, the next plenary meeting of the Subcommittee should be cancelled, and a working group should meet instead;

(g) The Subcommittee and its working groups should seek to schedule in advance informal consultations at which conference services would not be used. For that purpose, the Subcommittee and its working groups should decide as early as possible whether it would be feasible to cancel in advance some of their formal meetings in order to have informal consultations among interested delegations. That measure, if adopted, should not preclude resorting to unscheduled informal consultations following a decision of the Subcommittee or a working group, if such consultations were deemed necessary for attaining progress in deliberations;

(h) The Subcommittee should seek to reduce, by one a week, the number of morning plenary meetings and to allocate the time saved for the meetings of relevant working groups. For that purpose, the Chairman should set a deadline for closing lists of speakers for the general exchange of views and for each of the substantive agenda items;

(i) The Subcommittee and its working groups should begin their morning meetings at 10 a.m. with the understanding that that did not relate to and did not affect the question of the length of the session;

(j) When adopting and following the schedule of work, the Subcommittee should exercise flexibility in the allocation of time for consideration of items on its agenda. If the time previously allocated for the consideration of an item was not fully used or was unlikely to be used, the Subcommittee should seek, on the basis of consensus, to use the time for the consideration of other items on the agenda or, as the case may be, to consider the possibility of concluding the session ahead of the scheduled date. The adoption of that measure was without prejudice to the position of various delegations concerning the duration of the Subcommittee's sessions.

13. As for specific steps to implement measure (g) indicated in paragraph 12 above, the Chairman, at the opening meeting, proposed and the Subcommittee provisionally agreed not to schedule six formal afternoon meetings on 22, 23, 28, 29 and 31 March and 5 April so that informal consultations among interested delegations could be held instead.

14. Some delegations noted that the programme of work could be completed in less time than had been planned and suggested that, bearing in mind the suspension of work for four days over the Easter holidays, the session should conclude on 31 March without that necessarily constituting a precedent for future sessions.

15. The Subcommittee agreed that a similar flexible organization of work as agreed upon at the current session would again serve as the basis for organizing the work of the Subcommittee's thirty-fourth session.

16. At its 577th meeting on 30 March, the Chairman proposed, and the Subcommittee agreed, to conclude the session ahead of time in accordance with measure (j) contained in paragraph 12 above. Specifically, the Subcommittee decided to reduce the time allocated to consideration of agenda item 3 with a view to concluding the work of the Subcommittee on 6 April, two days ahead of the scheduled date. The Subcommittee agreed that that reduction was without prejudice to the length of future sessions of the Subcommittee.

17. The Subcommittee agreed that, in view of the recommendation to suspend for one year the work of its Working Group on agenda item 3, as contained in paragraph 9 of the report of the Chairman of that Working Group (see annex I), an additional measure concerning organization of work could be adopted for the Subcommittee's next session as follows:

(a) At the 1995 session, less time should be allocated for the consideration of item 3, compared to the time allocated for agenda items 4 and 5;

(b) The recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, on a permanent basis, should rotate each year the order of consideration of substantive agenda items (A/45/20, para. 143), should be suspended for the 1995 session, and that substantive agenda items should be considered at that session in the same order as in 1994 (items 4, 5 and 3).

The adoption of the above measure is without prejudice to the positions of various delegations concerning the duration of the Subcommittee's sessions.

18. In the course of a general exchange of views, some delegations expressed the view that the Committee on the Peaceful Uses of Outer Space, as well as its subcommittees, could play a supportive role for other international forums dealing with the problem of preventing an arms race in outer space and that, for that purpose, machinery should be established for cooperation between the Committee on the Peaceful Uses of Outer Space and the Ad Hoc Committee on Prevention of the Arms Race in Outer Space of the Conference on Disarmament. Other delegations expressed the view that consideration of that topic was not within the competence of the Committee on the Peaceful Uses of Outer Space and that establishment of any such machinery was therefore inappropriate.

19. In the course of a general exchange of views, some delegations expressed the view that an international agreement on the problem of space debris might be necessary in the future. Noting with satisfaction that the Scientific and Technical Subcommittee had commenced the consideration of space debris as an agenda item at its session in 1994, those delegations expressed the view that it was advisable for the Legal Subcommittee to begin consideration of legal issues relating to space debris. Other delegations expressed the view that the Scientific and Technical Subcommittee needed to be given a sufficient opportunity to adequately assess the problem of space debris before the issue could be considered by the Legal Subcommittee. Still other

delegations expressed the view that the Legal Subcommittee could examine the convenience of arranging for a seminar on possible legal implications of the existence of space debris in the geostationary orbit.

20. The Subcommittee expressed its gratitude to Mr. Sinha Basnayake, the former Secretary of the Subcommittee, for his contribution to its work during his tenure as Secretary of the Subcommittee.

21. The Subcommittee held a total of eight meetings. The views expressed at those meetings are summarized in documents A/AC.105/C.2/SR.572-579.

22. At its 579th meeting, on 5 April, the Subcommittee adopted the current report and concluded the work of its thirty-third session.

I. QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (AGENDA ITEM 3)

23. The Chairman made an introductory statement on agenda item 3 at the 577th meeting on 30 March. He recalled that the General Assembly, by resolution 47/68 of 14 December 1992, had adopted Principles Relevant to the Use of Nuclear Power Sources in Outer Space. He referred to the work of the Subcommittee at its thirty-second session in 1993.

24. The Chairman drew attention to the fact that the General Assembly, in resolution 48/39 of 10 December 1993, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, its consideration of the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

25. The Subcommittee noted that the subject of the use of nuclear power sources in outer space had been under consideration in the Scientific and Technical Subcommittee at its thirty-first session in 1994, and that the relevant parts of the report of that Subcommittee were contained in document A/AC.105/571, chapter IV and annex III.

26. The views expressed by delegations during the debate on agenda item 3 are contained in summary records A/AC.105/C.2/SR.578.

27. The Subcommittee expressed its satisfaction that, after many years of hard work, the Principles Relevant to the Use of Nuclear Power Sources in Outer Space had been adopted, without a vote, by the General Assembly. Taking that into account, some delegations expressed the view that it was necessary to consider the question of selecting a new topic for the Legal Subcommittee. Some of those delegations expressed the view that informal consultations should be undertaken as soon as possible for that purpose.

28. As mentioned in paragraph 8 above, the Subcommittee, at its 572nd meeting, re-established its working group on agenda item 3 under the chairmanship of Mr. F. Cede, representative of Austria.

29. At the 579th meeting, on 5 April, the Chairman of the Working Group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex I to the present report.

30. The Subcommittee, in particular, took note of the recommendation of the Working Group concerning the proposed suspension of its work in 1995, as contained in paragraph 9 of the report of the Chairman of the Working Group, and as outlined in paragraph 17 of the present report.

II. MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (AGENDA ITEM 4)

31. The Chairman made an introductory statement on agenda item 4 at the 572nd meeting on 21 March. He referred to the work of the Subcommittee at its thirty-second session in 1993.

32. The Chairman drew attention to the fact that the General Assembly, in its resolution 48/39, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union.

33. The Subcommittee noted that the subject of the geostationary orbit had been under consideration in the Scientific and Technical Subcommittee at its thirty-first session, in 1994, and that the relevant part of the report of that Subcommittee was contained in document A/AC.105/571, paragraphs 80-87.

34. The Subcommittee had before it working papers submitted at its previous sessions under that agenda item. The Subcommittee also had before it a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192) submitted at its thirty-second session in 1993 by the delegation of Colombia, which is set out in section A of annex IV to the present report.

35. The views expressed by delegations during the debate on agenda item 4 are contained in summary records A/AC.105/C.2/SR.572-575.

36. As mentioned in paragraph 8 above, the Subcommittee, at its 572nd meeting, re-established its Working Group on agenda item 4 under the chairmanship of Mr. E. Zawels, representative of Argentina.

37. At the 579th meeting, on 5 April, the Chairman of the Working Group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex II to the present report.

III. CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (AGENDA ITEM 5)

38. The Chairman made an introductory statement on agenda item 5 at the 575th meeting on 24 March 1994. He referred to the work of the Subcommittee at its thirty-second session in 1993.

39. The Chairman drew attention to the fact that the General Assembly, in its resolution 48/39, had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its Working Group, its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

40. The Subcommittee had before it a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes" (A/AC.105/C.2/L.182/Rev.1) submitted at its previous session by the delegations of Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela. At the current session Egypt and Iraq became co-sponsors of that working paper, which is set out in section B of annex IV to the present report.

41. Some delegations expressed reservations with respect to the working paper (A/AC.105/C.2/L.182/Rev.1).

42. Some other delegations expressed the view that the working paper (A/AC.105/C.2/L.182/Rev.1) presented a good and viable basis for consideration of the agenda item on outer space benefits taking particular account of the needs of developing countries.

43. The views expressed by delegations during the debate on agenda item 5 are contained in summary records A/AC.105/C.2/SR.575-577.

44. As mentioned in paragraph 8 above, the Subcommittee, at its 572nd meeting, re-established its Working Group on agenda item 5 under the chairmanship of Mr. R. González, the representative of Chile.

45. At the 579th meeting, on 5 April, the Chairman of the Working Group on agenda item 5 reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex III to the present report.

Annex I

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 3 (QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE)

1. On 21 March 1994, the Legal Subcommittee re-established its Working Group on agenda item 3.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-second session in 1993 (A/AC.105/544), which contained in its chapter I, a section on the question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space and, in its annex I, the report of the Chairman of the Working Group on agenda item 3. The Working Group also had before it the report of the Scientific and Technical Subcommittee on the work of its thirty-first session in 1994 (A/AC.105/571), which contained in its chapter IV, a section on the use of nuclear power sources in outer space and, in its annex III, the report of the Working Group on the Use of Nuclear Power Sources in Outer Space. The Working Group on agenda item 3 also had before it General Assembly resolution 47/68, whereby the Assembly had adopted the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as well as General Assembly resolution 48/39, which provided in paragraph 4 (a) that the Legal Subcommittee at its current session should continue, through its Working Group, its consideration of the question of early review and possible revision of the Principles.

3. At the commencement of the debate, the Chairman of the Working Group briefly reviewed the work of the Committee on the Peaceful Uses of Outer Space and its two subcommittees, which had taken place since the adoption of the Principles in 1992.

4. Some delegations noted with satisfaction a statement made at the thirty-first session of the Scientific and Technical Subcommittee and reiterated at the current session of the Legal Subcommittee that, upon review of its current policy and practice in the use of nuclear power sources in outer space, the Government of the delegation making the statement had found that its policy and practice on the use of nuclear power sources in outer space were fully consistent with the overall objectives and intent of the Principles, and that no revision of the Principles was needed.

5. Some delegations expressed the view that any revision of the Principles should await the results of the scientific and technical debate on the matter. Until that produced evidence that a revision was technically necessary, a detailed consideration of amendments to the Principles in the Legal Subcommittee would be premature. The view was also expressed that, as a practical matter, a closer relationship between the Scientific and Technical Subcommittee and the Legal Subcommittee should be established in examining that subject.

6. Some delegations expressed the view that any such revision should be geared towards the goal of strengthening the levels of safety provided by the Principles given the significant environmental implications of the use of nuclear power sources in outer space. The view was expressed that the use of nuclear power sources in outer space should be limited to those space missions that could not be reasonably executed without such sources in order to avoid the contamination of the environment.

7. The view was expressed that review and revision of the Principles might be necessary in order to establish positive law in that regard, and to provide a similar legal framework as that existing in other branches of international law, for example, in the law of the sea, which among other aspects could also address subjects related to transboundary pollution and the carriage of dangerous goods. The view was also expressed that the item on the use of nuclear power sources in outer space should be maintained on the agenda of the Legal Subcommittee.

8. Some delegations expressed the view that the Principles as adopted in General Assembly resolution 47/68, would remain valid until such time as they were amended. Some delegations also expressed the view that a proper consideration of the aims and objectives of any proposed revision of the Principles should be agreed upon before any specific revisions were considered.

9. Bearing in mind that the Scientific and Technical Subcommittee was in the process of considering the implications of the use of nuclear power sources, the Working Group recommended that the consideration of that item by the Group should be suspended for one year, pending the results of the work in the Scientific and Technical Subcommittee; however, the item concerning nuclear power sources should be retained on the agenda of the Legal Subcommittee to allow delegations to continue consideration of that item in the plenary. That recommendation was made without prejudice to the possibility of reconvening the Working Group on item 3 at the Legal Subcommittee's next session in 1995 if, in the opinion of the Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee, at its session in 1995, to warrant the reconvening of the Working Group of the Legal Subcommittee. That recommendation was without prejudice to the positions of various delegations concerning the duration of the Subcommittee's session.

10. The view was expressed that in order to allow for the best possible use of resources by the Legal Subcommittee and for maximum benefits in the deliberations on items 4 and 5 of the agenda, the time not utilized by the Working Group on item 3 at the next session could be allocated for discussions by the working groups on items 4 and 5, should it be necessary in the light of the discussions on those items at the next session.

11. The Working Group held its final meeting on 5 April 1994, when it considered and approved the current report.

Annex II

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 4 (MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION)

1. On 21 March 1994, the Legal Subcommittee re-established its Working Group on agenda item 4.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-second session in 1993 (A/AC.105/544), which contained, in its annex II, the report of the Chairman of the Working Group at that session. It also had before it the report of the Scientific and Technical Subcommittee on the work of its thirty-first session in 1994 (A/AC.105/571), which considered, in chapter VII, inter alia, the subject of the physical nature and technical attributes of the geostationary orbit.

3. The following documents submitted at previous sessions of the Legal Subcommittee were referred to in the course of the discussions: "Questions concerning the legal regime for aerospace objects", submitted to the Subcommittee at its thirty-first session by the delegation of the Russian Federation (A/AC.105/C.2/L.189); "Geostationary satellite orbit", submitted to the Subcommittee at its thirty-second session by the delegation of Colombia (A/AC.105/C.2/L.192); and an informal paper entitled "Draft questionnaire concerning aerospace objects", circulated at the Subcommittee's thirty-second session by the Chairman of the Working Group on agenda item 4 (A/AC.105/C.2/1993/CRP.1).

4. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that each aspect of the agenda item, namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, should be discussed by the Working Group separately.

5. The views expressed in the discussions of the Working Group are summarized below.

The definition and delimitation of outer space

6. At the commencement of the debate, the Chairman of the Working Group recalled that, at the last session of the Group in 1993, he had circulated an informal paper entitled "Draft questionnaire concerning aerospace objects" (A/AC.105/C.2/1993/CRP.1). The Chairman suggested that, while delegations were free to address any aspect of the definition and delimitation of outer space, it might be useful if they could offer their comments with regard to the proposed questionnaire since, in the Chairman's view, such discussions would be conducive to achieving progress in the Group's work.

7. The view was expressed that, after finalization, the questionnaire should be sent not only to Member States, but also to the International Civil Aviation Organization (ICAO). In that connection, the Chairman informed the Working Group that the draft questionnaire had been brought informally to the attention of ICAO, which had provisionally expressed its readiness to provide input, if requested, to the Legal Subcommittee's debate on the subject-matter of the draft questionnaire.

8. Some delegations expressed the view that the eventual objective of the questionnaire was not clear and that refinement of that informal document was needed, through discussions in the Working Group, before it

could be finalized for circulation to Member States. Some delegations also expressed the view that it would be necessary to determine, in advance, what could be done with the replies to the questionnaire.

9. Some delegations said that the draft questionnaire, in its current form, contained questions of both a technical and legal nature and that an effort should be made to distinguish between those two types of questions since any technical questions might best be answered by a body with scientific and technical competence. Those delegations believed that the draft questionnaire should be limited to legal questions in order to better correspond to the objectives of the Working Group.

10. Some delegations believed that the focus of the draft questionnaire should be directed at practical matters that would provide information appropriate to the discussions of the Working Group. Some of those delegations expressed the view that the objective of the questionnaire could be to determine relevant State practice with respect to aerospace objects and to elicit information on existing national legislation on that matter. Other delegations expressed the view that Member States actively involved in the use and exploration of outer space should be invited to present their opinions as to whether the questions contained in the questionnaire were relevant to the subject-matter of the debate on aerospace objects.

11. Some delegations expressed the view that, as an expert body in the field of international space law, the Working Group itself should examine and provide answers to the questions contained in the draft questionnaire and that, therefore, there was no need to circulate it to Member States.

12. The view was expressed that replies received could form the basis of a future legal document regulating the exploitation of aerospace objects. That delegation believed that the replies could, inter alia, provide an answer to the question of whether existing law would suffice or whether a special new legal regime should be elaborated for aerospace objects.

13. Some delegations expressed the view that an introduction explaining the origin and objectives of the questionnaire should be added to it.

14. At the second meeting of the Working Group, on 23 March, the Chairman circulated an informal paper containing an introduction to the draft questionnaire. The Chairman explained that the paper had been prepared by him in consultation with a number of delegations and was intended to explain briefly the origin and objectives of the questionnaire. The paper, as revised through informal consultations, read as follows:

> "1. The item relating to the definition and delimitation of outer space has been on the agenda of the Legal Subcommittee since 1967. At the thirty-first session of the Subcommittee in 1992, the delegation of the Russian Federation submitted a working paper (A/AC.105/C.2/L.189) on the questions concerning the legal regime for aerospace objects. At the thirty-second session of the Legal Subcommittee in 1993, the Chairman of the Working Group on agenda item 4 (Definition of outer space and utilization of the geostationary orbit) circulated an informal paper entitled 'Draft questionnaire concerning aerospace objects' (A/AC.105/C.2/1993/CRP.1). The Chairman explained that the paper had been prepared by him in consultation with a number of delegations and should be considered as a starting point for preparing a questionnaire to be sent to Member States.
>
> "2. The purpose of the questionnaire is to seek preliminary views of Member States and relevant international organizations on various issues relating to aerospace objects. It is hoped that, on the basis of the replies to the questions contained in the questionnaire, the Legal Subcommittee will be able to make progress in its consideration of agenda item 4. In particular, the replies to the questionnaire might help to clarify legal aspects of the possible use of aerospace objects."

15. Some delegations expressed the view that the introduction should be considered only after adequate consideration had been given to the text of the questionnaire.

16. The view was expressed that, without prejudice to the preparation of the questionnaire, it would be useful to find out at what altitude of an object's flight an underlying State would not be inclined to exercise its rights and obligations under air law with regard to that object. That delegation believed that the information might help to successfully address the question of determining the upper limit of State sovereignty.

17. Some delegations expressed the view that the practice of establishing maritime boundaries while retaining a single regime for different categories of sea-going vessels was an interesting example of an international law approach to the question of delimitation. The view was also expressed that, in principle, it would be possible to consider the possibility of applying, to some extent, a similar approach in the definition and delimitation of outer space.

18. The view was expressed that the answers to several questions currently contained in the questionnaire were already evident in the national practices of certain States and that those questions had also been clearly answered in previous statements in the Legal Subcommittee and other forums. That delegation reiterated its view that in the more than 30 years of the peaceful exploration of outer space there had never been a practical problem caused by the lack of a boundary between airspace and outer space, and that any attempt to establish such a boundary could cause more problems than it would solve. That delegation also said that the draft questionnaire was being reviewed by its Government and that it would be prepared to discuss matters raised in the questionnaire at future sessions.

19. The view was expressed that, in practice, the draft questionnaire appeared to be an effort to solicit the opinions of States on whether and at what altitude it was necessary to delimit airspace and outer space, and that that issue had been debated for many years within the Working Group and the Subcommittee without any prospects of a solution. In the view of that delegation, the draft questionnaire would only serve to reopen an old debate which had proved to be fruitless in the past.

20. The view was expressed that there were two types of vehicle which could fall within the category of aerospace objects. The first category would include vehicles whose destination was outer space, where they would carry out their mission and then either return to Earth or remain in space as spent vehicles or as space debris. The second category would include vehicles intended to provide transportation between two points on Earth while passing briefly through outer space. In the view of that delegation, all vehicles belonging to the first category were to be considered space objects. That delegation also believed that, if the aerospace object under discussion fell within the first category, it would still be necessary to determine whether there would be a need to legally delimit airspace and outer space. That delegation expressed the view that the second category of aerospace objects could be treated as both an aircraft while flying in airspace and as a spacecraft while flying in outer space. That delegation believed that, in that regard, it would be advisable to request from ICAO views on the legal aspects of the flights of aerospace objects and on the question of delimitation of airspace in general in view of the fact that the 1944 Chicago Convention on Civil Aviation established that States had complete and exclusive sovereignty over the airspace above their territories.

21. The view was expressed that the informal consultations held by the Chairman with interested delegations concerning the draft questionnaire had demonstrated the desire of those delegations to proceed with work on the refinement of the draft questionnaire with a view to finalizing it at the next session of the Subcommittee. That delegation believed that once the substantive provisions of the questionnaire were agreed upon, the question of who would be the recipients of the questionnaire might be easily resolved.

22. In summing up the discussions on the question of the definition and delimitation of outer space, the Chairman expressed the view that there was a commitment within the Working Group to continue discussion on the draft questionnaire at its next session.

The geostationary orbit

23. At the commencement of the debate, the Chairman of the Working Group recalled that at the last session of the Group in 1993, the delegation of Colombia had introduced a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192), which is contained in section A of annex IV to the report of the Subcommittee. The Chairman suggested that the Working Group begin its discussions with general statements on matters related to the geostationary orbit, after which the Group could conduct a paragraph-by-paragraph review of the working paper. The Chairman asked the delegation of Colombia to make introductory remarks to each paragraph, where necessary.

24. Some delegations expressed the view that both the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee had a mandate from the General Assembly to consider questions relating to the use of the geostationary orbit with a view to elaborating legal principles on the question. Some delegations also expressed the view that the work should be complementary to the activities of ITU.

25. Other delegations expressed the view that the Legal Subcommittee had no mandate to develop legal principles or a special legal regime for the geostationary orbit. Those delegations believed that ITU had been quite successful in dealing with various aspects of the rational and equitable use of the geostationary orbit and that it was necessary to avoid any possible conflict of activities between ITU and other international bodies. Those delegations also expressed the view that because the geostationary orbit was an integral part of outer space, the legal regime established by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) (adopted by the General Assembly in resolution 2222 (XXI) of 13 January 1966 and entered into force on 10 October 1967) adequately covered activities in and related to the geostationary orbit.

26. Some delegations expressed the view that, while the geostationary orbit was indeed a part of outer space, it had specific characteristics and features and was a limited natural resource which might become saturated. Therefore, a special legal regime should be elaborated in order to ensure equitable access to that orbit.

27. The view was expressed that there was a need to establish a sui generis legal regime for regulating access to and the use of the geostationary orbit which was a limited natural resource. Such a regime should guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries, including the equatorial countries due to their special characteristics. That delegation was in agreement with some portions of the working paper submitted by Colombia. Since outer space had not so far been delimited, it could not be affirmed that the geostationary orbit was a part of outer space. That delegation's Government continued to study the working paper submitted by Colombia, which was useful, and which enriched the debate in the Working Group on the geostationary orbit. In addition, that delegation noted that the special sui generis regime should also refer to the space debris issue.

28. Some delegations stated that their Governments were in the process of studying the working paper and that they would comment on it at the next session of the Legal Subcommittee.

29. At the start of the Working Group's paragraph-by-paragraph review to the working paper submitted by Colombia, the delegation of Colombia offered brief introductions to the individual paragraphs. It was explained that the paper had been submitted to develop legal principles, such as equity and efficacy, which were already norms of positive law as contained in the treaties of ITU that regulated certain aspects of the use of the geostationary orbit. Those treaties characterized the geostationary orbit as being a limited natural

resource. The goal of the working paper was to find a legal solution to guarantee in practice equitable access to the geostationary orbit through the establishment of certain preferential rights for developing countries and countries that currently did not have access to the orbit. Such a regime would be without prejudice to the technical role of ITU.

30. The delegation of Colombia explained that the affirmation that the geostationary satellite orbit was a limited natural resource, contained in paragraph 1 of the working paper, was based on both technical and legal reasoning. Similarly, the concept contained in paragraph 4, which defined the geostationary satellite orbit, was a recognized scientific fact. That paragraph was the physical foundation of the working paper and was inextricably related to paragraph 5. The delegation of Colombia further expressed the view that the ideas expressed in paragraphs 6, 7 and 8 were also closely linked and that there was nothing new in the approach suggested in paragraph 6 as compared to the provisions of article 33 of the ITU Nairobi Convention.

Title

31. With regard to the title of the working paper, an explanation was requested as to why, in the title as well as in the paper as a whole, the term "geostationary satellite orbit" was used and not "geostationary orbit". In reply, the delegation of Colombia explained that the term "geostationary satellite orbit" was used because it was more precise and technically appropriate in that an orbit did not exist by itself but rather was defined by the path followed by a satellite. It was further explained that that term had been used in the ITU Radio Regulations, where it had also been defined, as noted in the study prepared by the Secretariat entitled "Physical nature and technical attributes of the geostationary orbit" (A/AC.105/404).

Paragraph 1

32. With regard to paragraph 1 of the working paper, the view was expressed that the words "in accordance with", regarding the treaties of ITU, should be replaced with either the expression "consistent with" or "along the lines of". The view was expressed that the use of the expression "in accordance with" would reflect the role of ITU as recognized by the mandate established by the General Assembly, and should be retained.

33. Some delegations expressed the view that the part of the text beginning with the words "in accordance with" could be deleted.

34. The view was expressed that it would be useful to retain some reference to the ITU treaties in the working paper, but that such a reference could be contained in a separate paragraph.

35. The view was expressed that the description of the geostationary orbit as a natural resource was questionable. That delegation believed that the orbit could be better described as an artificial sub-product of a highly specialized, technical and recent human activity. In that connection, the view was expressed that article 33 of the ITU Convention stated that the geostationary satellite orbit and the radio frequency spectrum were limited natural resources.

Paragraphs 4 and 5

36. With regard to paragraphs 4 and 5, the view was expressed that those paragraphs could be combined into one paragraph to read as follows: "Agreeing with the fact that the geostationary satellite orbit is a fixed geometric locus in outer space".

Paragraphs 6 and 8

37. With regard to paragraphs 6 and 8, the view was expressed that the term "in practice" should be deleted from paragraph 6, but retained in paragraph 8. In reply the view was expressed that it was important to retain that term in both paragraphs in order to stress that the existing regimes for regulation of access to the geostationary orbit did not, in practice, ensure equitable access for all countries.

38. The view was expressed that it was very doubtful that the term "equitable", as utilized in the ITU Convention, could be construed to mean that there was a need for the establishment of "preferential rights" as suggested in the working paper.

Paragraph 7

39. Some delegations expressed the view that the word "complementary" would lose its meaning if, in paragraph 1, the part of the sentence beginning with "in accordance with" were deleted. The view was expressed that, in that case, paragraph 7 would have to be re-worded.

40. The view was expressed that the use of the terms "special legal regime" and "rational, effective, economical and equitable" in paragraph 7 were questionable and that the creation of a special legal regime for the geostationary orbit was not necessary as the orbit was covered by the terms of the Outer Space Treaty, which established a legal regime for all of outer space. The view also was expressed that the raison d'être of a special legal regime for the geostationary satellite orbit, in addition to the 1967 Outer Space Treaty, lay inter alia in the fact that an object placed in that orbit behaved differently in relation to the Earth from the way in which it would behave in another locus in outer space, i.e. that it would revolve around the Earth at the same speed as the Earth and would therefore appear to be fixed in relation to the Earth.

41. The view was expressed that paragraph 7, which was intended eventually to become a part of a General Assembly resolution, attempted to create a legal regime contradictory to that contained in the Outer Space Treaty and the ITU conventions, and that it was inappropriate to affect treaties ratified by most States of the world in that manner.

42. The view was expressed that the Outer Space Treaty was a general international legal instrument that did not apply to the special situation explained by the unique nature of the geostationary orbit. That delegation believed that the objective of the working paper was to go beyond the Outer Space Treaty in order to establish a special legal regime to take into account the particular characteristics of the geostationary orbit. The view was also expressed that the working paper was trying to fill in the legal gaps with regard to the geostationary orbit that existed in the ITU legal regime, without prejudice to the role of ITU.

43. Some delegations considered that the matter of space debris should be taken up by the Legal Subcommittee and with that in mind they considered that, at its next session in 1995, it would be useful to organize a seminar on legal issues related to space debris in the geostationary orbit. Other delegations felt that the General Assembly had mandated the Scientific and Technical Subcommittee to consider the subject and therefore it would be inappropriate for the Legal Subcommittee to consider the matter. Other delegations felt that although that important theme was being analysed in the Scientific and Technical Subcommittee, it nonetheless merited additional analysis and input which could be of general interest to all delegations and could also be transmitted to the Scientific and Technical Subcommittee as additional input to its consideration of the subject. Other delegations expressed the view that such a seminar was premature and questioned whether it was appropriate for the Legal Subcommittee, and they were of the view that holding such a seminar would cause confusion to the work of the subcommittees. The view was expressed that an academic seminar on space debris would be useful, but it would be premature to include the matter on the agenda of

the Legal Subcommittee. After informal consultations on the matter, it was agreed that further consultations would be pursued regarding the possibility of organizing a seminar.

44. In summing up the discussion on the question of the geostationary orbit, the Chairman expressed the view that the exchange of views which had taken place on the basis of working paper A/AC.105/C.2/L.192 had been productive and provided a good basis for the future work of the Working Group, which would continue to consider that paper at the next session.

45. The Working Group held its final meeting on 29 March, when it considered and approved the present report.

Annex III

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 5 (CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES)

1. On 21 March 1994, the Legal Subcommittee re-established its Working Group on agenda item 5.

2. The Working Group had before it a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes" submitted at its previous session by the delegations of Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela (A/AC.105/C.2/L.182/Rev.1). At the current session, the delegations of Egypt and Iraq also became co-sponsors of the working paper. The working paper is contained in section B of annex IV to the report of the Subcommittee.

3. In his introductory statement the Chairman referred to the work of the Working Group during its last session in 1993, outlining the extensive and productive exchange of views then undertaken. The Chairman expressed the view that working paper A/AC.105/C.2/L.182/Rev.1 provided the basis for further progress on the item and that he hoped such progress could be achieved at the current session.

4. A statement was made by the delegation of Brazil on behalf of the co-sponsors of working paper A/AC.105/C.2/L.182/Rev.1. The Working Group was informed of the general goals of the document and premises underlying the concepts contained in the working paper. Some delegations welcomed the working paper and expressed their support of the proposals contained in it.

5. Upon a suggestion by the Chairman, the delegation of Brazil, on behalf of the co-sponsors, proceeded with a brief introduction of each preambular paragraph and each paragraph of the text set forth in the annex of the working paper (A/AC.105/C.2/L.182/Rev.1), in order to explain the rationale for those paragraphs, to provide some background on how they had been formulated and to elicit comments from other delegations. That introduction, as well as the comments of other delegations, is set out in paragraphs 13-52 below.

6. Some delegations rejected the need at that stage to elaborate principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes, as proposed in the working paper because, in their view, there existed significant international cooperation in the peaceful uses of outer space and such principles would only limit a State's sovereign right to choose with whom, and in what form, a State conducted cooperative activities and would also limit the extent of ongoing cooperation. Some delegations expressed the view that while they were opposed to the adoption of any such principles for those same reasons, they were nevertheless willing to continue discussions on the working paper and the concepts contained therein.

7. Other delegations expressed the view that the principles outlined in the paper ensured the sovereign rights of Member States with regard to their cooperative space activities and were intended solely to facilitate further international cooperation in the peaceful uses of outer space and to provide guidelines for such cooperation. In any case, some delegations noted that principles adopted by General Assembly resolutions were not legally binding on Member States but were intended to provide the framework for enhancing cooperation among States.

8. Some delegations expressed the view that, although there was opposition to the very concept of elaborating and adopting the principles proposed in the working paper, it was nevertheless important to continue discussions on those issues in the Working Group since the positions of Member States had the tendency to evolve over time. They recalled, in that regard, that initially there was strong opposition to the idea of elaborating draft principles relevant to the use of nuclear power sources in outer space and to remote sensing of the Earth from outer space, but eventually those principles had been successfully elaborated and adopted by consensus.

9. Some delegations expressed the view that all the preambular paragraphs of the working paper had been discussed in detail at previous sessions of the Working Group and the lack of opposition to those paragraphs at the current session indicated that delegations were prepared to adopt them. Other delegations expressed the view that their lack of comment on a specific paragraph or group of paragraphs in no way signalled their approval or willingness to adopt those paragraphs. Some of those delegations said that their Governments were still studying the working paper but the discussions in the Working Group were useful nevertheless.

10. The view was expressed that it was still necessary for the Working Group to consider the appropriate legal form and title of an eventual document to be elaborated on the basis of the working paper.

11. The view was expressed that the principles relating to international cooperation contained in document A/AC.105/C.2/L.182/Rev.1 referred to the exploration and utilization of outer space and not to the geostationary orbit.

12. Some delegations expressed the view that the Working Group should include environmental considerations, particularly as they related to the recommendations of the United Nations Conference on Environment and Development (UNCED), in its discussions of principles regarding international cooperation in the peaceful uses of outer space. In particular, it was important for the Working Group, and the co-sponsors of the working paper, to focus on how the transfer of space technology could contribute to sustainable development.

Preambular paragraphs

13. With regard to the first preambular paragraph, the Working Group was informed that the reference to specific Articles of the Charter of the United Nations had been added at the suggestion of a particular delegation and that, at the previous session, the view had been expressed that the words "bearing in mind", in relation to provisions of the Charter, should be replaced with the words "based on" or "in accordance with". The co-sponsors had no objection to such a change.

14. The Working Group was informed that, at the 1993 session, the view had been expressed that the words "bearing also in mind" in the second preambular paragraph in connection with the 1967 Outer Space Treaty should be replaced with the word "confirming".

15. The Working Group was informed that the third preambular paragraph had been altered from an earlier version to include references to several relevant General Assembly resolutions. The view had been expressed at the 1993 session that, for the sake of clarity, the titles of the General Assembly resolutions referred to in that paragraph should be mentioned in addition to their numbers. The view had also been expressed that the paragraph should refer only to General Assembly resolutions adopted by consensus.

16. The Working Group was informed that the fourth preambular paragraph had not been in the first draft of the paper submitted in 1992, but had been included at the request of certain delegations. The view was

expressed that, notwithstanding the lack of full implementation, the reference to the recommendations of the UNISPACE 82 conference, remained valid.

17. The Working Group was informed that the fifth preambular paragraph had been altered to include text from the first paragraph of article I of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), as suggested by a particular delegation. At the 1993 session some delegations had expressed the view that that paragraph combined two different ideas and that it might be interpreted as an attempt to alter the principle enshrined in the first paragraph of article I of the Outer Space Treaty. In the view of those delegations, the words "taking into particular account the special needs of the developing countries" should be deleted from that paragraph since they were not contained in the above-mentioned provision of the Treaty. The view was also expressed that the intended meaning of that term was not clear. Other delegations expressed the view that the wording of the fifth preambular paragraph correctly reflected the title of item 5 of the Subcommittee's agenda, as agreed upon by consensus, which originated from article I, paragraph 1, of the Treaty, with the addition of the words "taking into particular account the needs of the developing countries". The view was expressed that the term "special needs of developing countries" was intended to apply to the needs of those countries as they related to space technology.

18. The Working Group was informed that the seventh preambular paragraph, regarding the significant amount of cooperation in the peaceful uses of outer space that had already been undertaken, had been added to the paper at the suggestion of a particular delegation.

19. The Working Group was informed that the eighth preambular paragraph had been amended in the light of the addition of the seventh preambular paragraph. As amended, the paragraph illustrates the basic concept of the paper, which was to promote international cooperation in the peaceful uses of outer space. It had been suggested that the word "facilitate" be replaced with a more affirmative word or phrase but no specific replacement had so far been offered.

20. The Working Group was informed that the word "exclusively" had been deleted from the ninth preambular paragraph at the request of certain delegations who had expressed the view that that term did not accurately reflect the meaning of the Outer Space Treaty. The view had also been expressed that that paragraph, which stressed the need for maintaining the exploration and utilization of outer space for peaceful purposes, could be merged with the tenth preambular paragraph, which conveyed the determination to maintain outer space for peaceful purposes through the promotion of international cooperation in its exploration and utilization, and therefore essentially expressed the same idea.

21. Regarding the manner for the utilization of outer space referred to in the eleventh preambular paragraph, the view was expressed that that provision seemed to extend to the utilization of outer space the rational and equitable criteria applicable to the geostationary orbit as provided for in article 33 of the International Telecommunication Convention, and that such an application raised a question of consistency with article I of the 1967 Outer Space Treaty. The view was also expressed that the words "rational" and "equitable" required further clarification. Other delegations expressed the view that the word "rational", which had a more practical and technical connotation, was included in that paragraph as a balance to the word "equitable", which had a moral connotation. The view was also expressed that several international agreements, General Assembly resolutions and the Statute of the International Court of Justice used the word "equitable" or "equity" and that there was a general understanding of the meanings of those words.

22. The Working Group was informed that the twelfth preambular paragraph had been altered slightly to make it consistent with the corresponding paragraph of the Principles Relating to Remote Sensing of the Earth from Outer Space.

23. Some delegations expressed the view that that paragraph had an operative element that presupposed a willingness on the part of delegations to adopt the principles outlined in the text of the paper, which was not the case.

Text set forth in the annex

Principle I

24. With regard to paragraph 1, the Working Group was informed that the word "special" had been added to make that paragraph consistent with the fifth and eighth preambular paragraphs. Some delegations expressed the view that the word "special" in connection with the needs of developing countries lacked clarity. The view was also expressed that, if it was concluded that developing countries did have special needs, then the word "special" should not be removed from the provision. The view was also expressed that developing countries clearly had special needs specifically as they related to space science and technology. The view was expressed that the existing paragraph should be replaced with:

> "Within the context of international cooperation, the exploration and utilization of outer space should be carried out for the benefit of all mankind."

25. The view was expressed that it was necessary to examine whether the term "States", "countries" or "mankind" should be used in that paragraph since those terms had different connotations.

26. The view was expressed that that paragraph was a reiteration of a res communis concept in application to outer space.

27. The Working Group was informed that the words "should contribute" in paragraph 2 had been substituted for "bear a special responsibility" in order to alleviate concerns of certain delegations that that expression would impose a legal obligation to cooperate.

28. The Working Group was informed that paragraph 3 had been included at the suggestion of certain delegations to incorporate the concepts of sovereignty, solidarity and equity and was intended to convey the concept that States had the right to determine the content and specific forms of cooperation, including its manner, conditions and the treatment granted to the recipient country of such cooperation. The view had also been expressed that the last clause of that paragraph was not logically connected to the preceding clause, and that the paragraph could be redrafted as follows:

> "When deciding the modalities of their cooperation, States should take into account, particularly in the framework of multilateral cooperation, the solidarity and equity that should prevail in the exploration and utilization of outer space for peaceful purposes, as a province of all mankind."

Principle II

29. With regard to paragraph 1, it was suggested that the word "should" be replaced with the word "shall". In reply, the view was expressed that the term "shall" was generally used in treaties and would therefore be inappropriate.

30. The view was expressed that in that paragraph it might be appropriate to add a reference to national legislation or multilateral legal arrangements regulating access to space knowledge and applications.

31. The view was expressed that the terms of that principle appeared too stringent and, in particular, paragraph 2 implied that international cooperation in the peaceful uses of outer space constituted a one-sided relationship in which such cooperation should be initiated by the developed countries. That delegation also expressed the view that paragraph 3 should be deleted and replaced with one that stated that the conditions of participation in international cooperative programmes should be considered in accordance with the national needs and interests of all parties.

32. Some delegations expressed the view that paragraph 3 implied that a "most favoured nation" regime should govern international cooperation in the peaceful uses of outer space and that that was inappropriate in the context of that highly specialized and complex field. In that connection, the view was expressed that in other areas the "most favoured nation" regime was applied only to the parties of relevant bilateral or multilateral agreements, while that paragraph appeared to be aimed at extending such a regime to all States.

33. The view was expressed that the principles should take into account commercial realities, the industrial potential of the spin-offs of space technology and the successful conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). In that regard, that delegation suggested that a new paragraph could be added to that principle which would read:

> "The foregoing paragraphs of this principle are without prejudice to international agreements on the protection of intellectual property."

The view was also expressed that if such a paragraph were added, it would be useful to refer to specific international agreements concerning intellectual property, for example the Berne and Paris Conventions, other agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights concluded under the Uruguay Round of GATT.

34. The view was expressed that a provision should be added to that principle to the effect that the terms for cooperation should be mutually agreed upon by the parties concerned.

35. The Working Group was informed that paragraph 4 had been added at the 1993 session to take into account the concerns of certain delegations and that, to address those concerns, terms such as "reciprocity" and "special treatment" had been deleted. That paragraph was intended to convey the basic concepts of the paper, namely that cooperation should prevail in activities among States; States were free to choose with whom and under what terms they cooperated; and that cooperation should take into account the level of development in order to maximize the benefits to both parties in such cooperation.

36. Regarding the treatment to be granted to developing countries under that paragraph, the view was expressed that the word "treatment" should be replaced with the word "assistance".

Principle III

37. The Working Group was informed that at the 1993 session some delegations had questioned whether the reference to the development of indigenous capabilities of all States as the main objective of international cooperation meant that international cooperation should be conducted to allow all States to achieve the same stage of development in space matters. In the view of other delegations, the development of national capabilities in all fields of science and technology was a generally accepted goal. In that regard, the Working Group was informed that the purpose of paragraph 1 was not to enable all countries to have full space programmes or to achieve equality in all aspects of space activities, but rather to enable developing countries to be in a position to develop space capabilities and fully participate in international cooperation.

The view had also been expressed that the scope of international cooperation as envisaged by principle III, paragraph 1, was to allow those countries lacking ability or resources for developing indigenous capabilities to realize that goal, without imposing any binding obligation upon developed countries. In that regard, the development of indigenous capabilities was in accordance with the general framework within which the Working Group had its mandate, namely to consider legal aspects related to the exploration and utilization of outer space for the benefit and the interest of all States, taking into particular account the needs of the developing countries.

38. The Working Group was informed that at the 1993 session some delegations had expressed the view that, in outer space matters, developing countries might have different needs according to their stage of development. In that regard, some developing countries might need to improve their capacity to absorb the technology of other countries; other developing countries might need to develop their scientific knowledge; and some developing countries might need to enhance their indigenous capability. According to those delegations, paragraph 1, in its current wording, did not address all of the broad range of needs that the developing countries might have. It had been suggested by some delegations that that problem could be solved by adding the words "to make cooperation more viable in all its aspects" at the end of the paragraph.

39. With regard to paragraph 1, the view was expressed that the development of indigenous capabilities was not an end in itself nor necessarily the primary objective of international cooperation. That delegation suggested that the paragraph should read as follows:

> "The general objective to be pursued by international cooperation in outer space should be the development by all States concerned of the necessary infrastructure in space science and technology and their applications, ensuring the effective attainment of the objectives of such cooperation."

40. Some delegations expressed the view that there were other relevant objectives that should be referred to in the paragraph, such as the non-duplication of efforts, the efficient allocation of resources and the coordination of policies. The view was expressed that the words "and encouragement" should be inserted after the word "development".

41. With regard to the promotion and facilitation of the exchange of expertise and technology under paragraph 2, the Working Group was informed that some delegations had suggested a separate paragraph be added to enable developing countries without space capabilities to have access to the benefits of space science and technology. The paragraph would read as follows:

> "The trade barriers obstructing such exchange or affecting the transfer of the technology necessary for the development of indigenous capabilities should be gradually removed, in particular with regard to the developing countries."

42.. The view was expressed that the term "just and equitable parameters" was unclear in the context of paragraph 3. The view was also expressed that the term "inter alia" should be inserted after the phrase "exchange of" so as not to limit exchanges among States solely to material and equipment.

Principle IV

43. The Subcommittee was informed that, in response to certain delegations, the word "exclusively" had been deleted from paragraphs 1 and 2, where it had preceded the words "for peaceful purposes".

44. A clarification was requested as to whether a reference to intellectual property rights, similar to that which had been suggested for inclusion in principle III, would be appropriate in that principle. In reply, some delegations expressed the view that because the concepts addressed in the two principles were different, there was no need for such a reference.

45. The view was expressed that paragraph 3 was out of the context of principle IV, which dealt with ensuring peaceful uses of outer space, and that it was hardly feasible to establish guidelines for the transfer of technology specifically in the field of outer space. The view was also expressed that the phrase "facilitate the objective settling of the needs" should be replaced with "assist in meeting the needs for".

Principle V

46. The view was expressed that, in order to be consistent, all three paragraphs should refer to the protection and preservation of the outer space environment. Other delegations expressed the view that since space technology was a powerful tool for monitoring and protecting the Earth environment, stress should also be placed on preserving the Earth environment.

47. With regard to paragraph 1, the view was expressed that there was some contradiction in establishing a goal of preserving the outer space environment and saying that it should be exploited in such a way as not to hinder its continued exploration. That delegation believed that, therefore, the sentence should end after the word "environment". The view was also expressed that paragraph 1 reflected the idea of sustainable development as applied to the outer space environment and that therefore such a contradiction did not appear to exist.

48. The view was expressed that it was unclear with whom States should coordinate their efforts referred to in paragraph 2. In reply, it was stated that States should coordinate their efforts with other interested States with the means to do so.

49. The view was expressed that the last phrase of paragraph 3 should read as follows: "with a view to preserving both the outer space and Earth environments for future generations."

Principle VI

50. The view was expressed that "United Nations" should be inserted before "Space Applications Programme" in paragraph 2.

51. With regard to paragraph 3, the Working Group was informed that at the 1993 session the view had been expressed that the provision should take into account the uses of outer space technologies and applications for educational purposes. In that connection, it had been suggested to add a new subparagraph, immediately after subparagraph (e), to read as follows:

> "Applications of space technologies for implementing educational programmes to eliminate illiteracy, enhance educational level and set up training centres for teachers and technicians, particularly in the rural and remote areas of developing countries."

The view was expressed that the proposed new paragraph should be amended so the phrase "remote areas of developing countries" would be replaced with "remote areas, especially in developing countries".

52. The view was expressed that the term "redistribution", as used in paragraph 3, subparagraph (f), was inappropriate and it was suggested, therefore, replacing the first part of the sentence with: "Equitable use of spin-offs in the framework of international cooperation".

53. The view was also expressed that at the next session of the Subcommittee, States should provide ideas regarding the organizational framework, methods and means of the conduct of international cooperation which, in their view, must be borne in mind for further consideration of the questions of the institutionalization of possible new principles and forms of cooperation. In that context, it was noted that special interest, from the point of view of studying factors influencing the formation of individual national interests of States, would be provided through information and analytical materials from the developing countries possessing capabilities in the area of space activities and related areas of technology and techniques.

54. On behalf of the co-sponsors, the delegate of Brazil, summarizing the progress that had been achieved in the context of the Working Group's discussion on working paper A/AC.105/C.2/L.182/Rev.1, as well as during the ongoing debate in the Subcommittee, stated that several constructive and substantive suggestions had been presented by various delegations and that, in the context of those suggestions, some delegations had expressed specific concerns with regard to the draft set of principles contained in the working paper. Those concerns included: (a) that a high level and long history of successful cooperation in the peaceful uses of outer space had existed without the proposed principles; (b) that any set of principles could be a source of concern since they would either be legally binding or might serve no purpose; (c) that there should be adequate compensation for technology transfers; (d) that questions relating to intellectual property must be addressed; (e) that security issues related to non-proliferation must also be examined; (f) that the practices of States with regard to international cooperation should be analysed; (g) that developing countries required adequate institutions in order to be able to benefit from cooperation; (h) that discussions on that question should not be focused on "haves" versus "have-nots"; and (i) that the co-sponsors, at the next session of the Subcommittee, should provide information on how they viewed a framework for the practice of international cooperation. On behalf of the co-sponsors, the delegate of Brazil, responding to the comments and suggestions of other delegations, stated that the co-sponsors did not deny the existence of broad international cooperation in the peaceful uses of outer space, and that, quite to the contrary, that cooperation was one of the very bases on which document A/AC.105/C.2/L.182/Rev.1 rested. He also said the co-sponsors had no intention of seeking to limit States' sovereignty to choose with whom and on what terms they cooperated and that continued discussions on the matter should not revolve around the question of whether or not any set of principles elaborated in the Subcommittee would be legally binding on Member States. He believed that, based on the discussions at the current session, there appeared to be no fundamental differences among delegations that could not be reconciled through constructive debate and that the co-sponsors would now have to analyse the results of the current session and determine how best to proceed at future sessions of the Working Group. The delegate of Brazil concluded that the current session had been constructive and positive and that the suggestions made during the session would be taken into account with a view to submitting a revised version of the working paper at the next session of the Working Group.

55. The Chairman of the Working Group expressed the view that the discussion on item 5 of the agenda, both in the plenary and in the Working Group, had significantly expanded the terms of reference of the debate, which was conducive to achieving progress in the future work of the Working Group.

56. The Working Group held its final meeting on 5 April, when it considered and approved the present report.

Annex IV

DOCUMENTS ANNEXED TO THE REPORT

A. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

Colombia: working paper (A/AC.105/C.2/L.192 of 30 March 1993)

Geostationary satellite orbit

The General Assembly,

1. Recognizing that the geostationary satellite orbit is a limited natural resource and, therefore, must be used in a rational and equitable manner and for the benefit for all mankind, taking into account the special needs of the developing countries, in accordance with the relevant international telecommunication treaties (Malaga-Torremolinos, 1973; the World Administrative Radiocommunication Conference, Geneva, 1979; Nairobi, 1982; Nice, 1989),

2. Recalling that the development of space science and technology applied in the utilization of the geostationary satellite orbit is of fundamental importance for the economic, social and cultural development of the peoples of all States,

3. Taking into account the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies adopted by the General Assembly in resolution 2222 (XXI) of 13 January 1966 and entered into force on 10 October 1967, which enshrines the peaceful use of outer space for the benefit of all mankind through promoting international cooperation and understanding,

4. Agreeing with the fact that the geostationary satellite orbit is a geometric locus in outer space where, inter alia, an object in orbit behaves differently with respect to the Earth from the way in which it would behave in any other locus in outer space, that is, it revolves at the same speed as the Earth, for which reason, viewed from the Earth, it seems to be fixed,

5. Agreeing also that the geostationary satellite orbit is part of outer space,

6. Reaffirming the need to guarantee to all States in practice equitable access to the geostationary satellite orbit, in accordance with article 33 of the Nairobi International Telecommunication Union Convention,

7. Considers that there should be a special and complementary legal regime with respect to the geostationary satellite orbit to ensure that that resource is used, in accordance with the treaties, in a rational, effective, economical and equitable manner,

8. Affirms that in practice, equity would be achieved through the establishment of a concrete and specific preferential right,

9. Recommends the application of the following criteria:

(a) When a developed country and a developing country have equal claims to access to the same orbital position or neighbouring positions, or when a country which has already had access and another country which has not yet had access have equal claims, preference would be given to the developing country or to the country which has not yet had access when the access of those satellites to the same locus makes their operation incompatible radio-electronically or renders their operation difficult or too restrictive. In any case, the preferential right to access physically to the orbital position shall be exercised within the time slots provided for under the radio communication regulations of the International Telecommunication Union;

(b) When there are equal claims by two or more developing countries, or by two or more developed countries, the principle of "first-come, first-served" shall be applied;

(c) There is a need for reserving suitable orbital positions/frequencies to meet the requirements of the developing countries. Such reservations should be kept available for as long as legitimate efforts are made to utilize the position(s) reserved for them;

(d) Notwithstanding the above provision, if a claim was raised for a position in the geostationary satellite orbit by a developing country which has no adequate capability to launch the satellite in the immediate future, while at the same time that claim was raised by another State which has the capability to do so immediately, then the substantiated claim in the latter case shall prevail, in accordance with the principle of effectiveness as enunciated in the International Telecommunication Union Convention.

B. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

Argentina, Brazil, Chile, Colombia. Egypt, Iraq, Mexico, Nigeria. Pakistan, Philippines, Uruguay and Venezuela: working paper (A/AC.105/C.2/L.182/Rev.1 of 31 March 1993)

Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes

The General Assembly,

Bearing in mind the provisions of the Charter of the United Nations, in particular Articles 1, 13, 55 and 56 thereof,

Bearing also in mind the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Recalling all relevant General Assembly resolutions, in particular resolutions 2625 (XXV) of 24 October 1970, 3362 (S-VII) of 16 September 1975, 41/65 of 3 December 1986 and 47/68 of 14 December 1992,

Recalling also the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other relevant international conferences on this subject,

Desirous of strengthening and further developing the principle that "the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interest of all States, irrespective of their degree of economic or scientific development, and shall be the province of all mankind", and also taking into particular account the special needs of the developing countries,

Further recalling that outer space, including the Moon and other celestial bodies, shall be free for exploration and utilization by all States without discrimination of any kind, on a basis of equality and in accordance with international law,

Welcoming that significant international cooperation in the exploration and utilization of outer space for peaceful purposes has already been undertaken and continues to be pursued among States and international organizations,

Stressing the need to further facilitate and encourage international cooperation in the exploration and utilization of outer space, taking into particular account the special needs of the developing countries,

Stressing also that the exploration and utilization of outer space shall be maintained for peaceful purposes,

Determined to maintain outer space for peaceful purposes through the promotion of international cooperation in its exploration and utilization,

Conscious of the need to utilize outer space in a rational and equitable manner as well as to preserve it for future generations,

Adopts the principles regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes set forth in the annex to the present resolution.

Annex

PRINCIPLES REGARDING INTERNATIONAL COOPERATION IN THE EXPLORATION AND UTILIZATION OF OUTER SPACE FOR PEACEFUL PURPOSES

I.

1. The exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the special needs of developing countries.

2. States with relevant space capabilities and with programmes for the exploration and utilization of outer space should contribute to promoting and fostering international cooperation in outer space science and technology, and in their applications.

3. States are sovereign in deciding the modalities of their cooperation, taking into account the solidarity and equity that should prevail in the exploration and utilization of outer space for peaceful purposes, as a province of all mankind, particularly in the framework of multilateral cooperation.

II.

1. All States should have access to the knowledge and applications derived from the exploration and utilization of outer space for peaceful purposes on an equitable, non-discriminatory and timely basis.

2. States pursuing programmes of exploration and utilization of outer space should facilitate access to the knowledge and applications derived therefrom to other States, particularly developing countries, through programmes of international cooperation designed for that purpose.

3. Conditions offered to one State in a specific programme of cooperation in outer space should, as appropriate, be extended to other countries with which a similar programme of international cooperation is established.

4. In pursuing international cooperation in the exploration and utilization of outer space for peaceful purposes, developing countries should benefit from a treatment which will enable them to fully benefit from such cooperation. This treatment is especially relevant in programmes oriented to the dissemination of scientific and technological knowledge, and should take into account the level of development of the countries involved in such cooperation.

III.

1. The main objective to be pursued by international cooperation in outer space should be the development by all States of indigenous capability in space science and technology and their applications.

2. States with relevant space capabilities and with programmes of exploration and utilization of outer space should promote and facilitate the exchange of expertise and technology to all States, particularly the developing countries.

3. States should promote the exchange of material and equipment for, and the transfer of technology on, the exploration and utilization of outer space within just and equitable parameters of price and payment.

IV.

1. International cooperation in the exploration and utilization of outer space should be for peaceful purposes.

2. States providing or benefiting from international cooperation in outer space science and technology and its applications should ensure that they are used for peaceful purposes.

3. No arbitrary or discriminatory conditions should be applied to exchanges of knowledge and applications destined for the peaceful exploration and utilization of outer space. To this end, negotiated international guidelines so established would facilitate the objective settling of the needs for equipment and technological transfers.

V.

1. All States should pursue their activities in outer space with due regard to the need to preserve the outer space environment, in such a way as not to hinder its continued exploration and utilization.

2. States should pay attention to and coordinate their efforts in all aspects related to the protection and preservation of the outer space environment, especially those potentially affecting the Earth's environment.

3. States with relevant space capabilities and with programmes for the exploration and utilization of outer space should share on an equitable basis with other States, in particular developing countries, the scientific and technological knowledge necessary for the proper development of programmes oriented to the more rational exploration and utilization of outer space, with a view to preserving the outer space environment for future generations.

VI.

1. The role of the United Nations and the scope of its activities in international cooperation in the exploration and utilization of outer space should be strengthened and enlarged, particularly through the United Nations Programme on Space Applications.

2. All States should contribute to the Programme on Space Applications in accordance with their space capabilities and their participation in the exploration and utilization of outer space.

3. In order to give concrete meaning to these Principles regarding International Cooperation in the Exploration and Utilization of Outer Space for Peaceful Purposes, States should concentrate their efforts in the following areas:

(a) Promotion of the development of indigenous capability in space science and technology, particularly in developing countries;

(b) Continued exchange of information, data, materials and equipment on space science and technology;

(c) Promotion of joint partnerships or ventures in the spheres of space science and technology;

(d) Promotion of easy and low-cost accessibility and availability of remote-sensing data, the ground receiving stations and the digital image processing systems;

(e) Technical cooperation to promote and facilitate the transfer of technology and expertise in space science and technology, particularly with developing countries;

(f) Equitable redistribution of the spin-off benefits of space science and technology, in particular taking into account the special needs of the developing countries.